IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

Crl.MC.No. 532 of 2007()

CC.942/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHALAKUDY

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PETITIONER: ACCUSED

TOMY MANJOORAN, S/O K.V.POULOSE,
KALADUDY HOUSE, ASRAMAM LANE,
POTTA, CHALAKUDY, MUKUNDAPURAM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS: STATE AND COMPLAINANT

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1. THE STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. N.L.RAPHEAL, S/O N.T.LONAPPAN,
NADAKAVIL HOUSE, VETTUKADAVU ROAD,
KIZHAKECHALAKUDY VILLAGE,
MUKUNDAPURAM TALUK.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 532 of 2007

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Dated this the 28th day of February, 2007

O R D E R

The petitioner faces indictment in a private complaint and the allegation against him are under Section 420 I.P.C. The case was filed as early as in 2000 and the case has now been transferred to the list of long pending cases. According to the petitioner, the matter has been settled between him and the complainant. The petitioner has come to this Court with a prayer that in the light of the composition, powers under Section 482 Cr.P.C. may be invoked and the proceedings may be quashed.

2. Why should the powers under Section 482 Cr.P.C. be invoked? When the offence is a compoundable offence, why is the petitioner not appearing before the learned Magistrate and seeking composition under Section 320 Cr.P.C.? It may be true that it is more convenient for the petitioner to come to this Court. But powers under Section 482 Cr.P.C. are not to be invoked merely to cater to the convenience of the parties. This Court cannot hope to entertain applications for composition which must legitimately be made before

the concerned Magistrates. Powers under Section 482 Cr.P.C. are to be invoked in exceptional cases and in aid of justice. I do not find any such circumstance in this case.

3. The learned counsel for the petitioner submits that if the petitioner were to appear before the learned Magistrate and seek composition he will be unnecessarily remanded to custody and the application for bail will be taken up for consideration on a later date. He will at any rate have to produce the sureties also. I find no merit in this contention. If the complainant and the petitioner would appear before the learned Magistrate and seek acceptance of the composition, I find no reason why the learned Magistrate should not consider such application for composition straight away and oblige the petitioner unnecessarily to apply for bail. When parties have compounded the offence and they report such composition before the learned Magistrate, such application for composition must be disposed of without any further delay. This is a private complaint and there cannot possibly be any dispute regarding identification of the complainant.

4. This Crl.M.C. is hence dismissed, but with the specific observation that if the petitioner and the complainant appear before the learned Magistrate and apply for composition in accordance with law, the

learned Magistrate must proceed to consider the application for composition on merits on the date of such application itself without unnecessarily obliging the petitioner to remain in custody or to seek bail. Needless to say, proceedings, if any, under Section 446 Cr.P.C. are liable to be continued.

(R. BASANT)
Judge

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